



GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

ORDER OF THE STATE ENGINEER

SEP 10 2011

On Application for Nonuse of Water For Water Right Number 57-7800

Water Right Number 57-7800 in the name of Kevin Tolton, was filed for the use of 0.0565 cubic-feet per second (cfs) or 0.92 acre-foot (af) of water from a well located: North 242 feet and East 770 feet from the W $\frac{1}{4}$ Corner of Section 12, T3S, R1E, SLB&M (existing 8-inch, 145 feet deep). The water is for the irrigation of 0.01 acre, the year-round, indoor, domestic requirements of 1.0 equivalent domestic unit, and the year-round stockwatering requirements of 15.0 equivalent livestock units (in cattle, horses, or equivalent species). The water is used in all or portion(s) of Section 12, T3S, R1E, SLB&M.

Notice of the Application for Nonuse of Water was published in the Deseret News on April 30 and May 7, 2009, and late protests were received from Salt Lake City Corporation ("SLC"), Metropolitan Water District of Salt Lake & Sandy ("MWDSLS"), and Sandy City ("Sandy"). Review of the application has been made to verify compliance with statutory criteria. A hearing was held Wednesday, July 13, 2011.

The applicant indicated the non-use application is appropriate because he has not been able to use the water due to pending litigation. He indicates he is the owner of the right and there is an approved change application filed on the right. The water right is in association with the South Despain Ditch, which is an association of several users. The water has been used cooperatively from the South Despain Ditch. The applicant has no personal knowledge of the well.

SLC and MWDSLS expressed concern that the applicant is not the appropriate person to file the application. Title was updated by appurtenance using an assumption of a quarter interest in the underlying right. The amount of water transferred is questioned if based on appurtenance. The filing of the non-use application is also questioned because the title to the right was in question when the application was filed. SLC also explained a 1934 contract in which the original families transferred the winter portion of this right to SLC subject to a reservation of 7500 gallons per day to be delivered by a 6-inch tee from the Murray Penstock. Sandy City currently serves the subdivision located at the historic place of use. Sandy concurred with the other protestants' statements.

The State Engineer has reviewed the water right and requested clarification on the use of water. It is noted a Change Application (a24463) was filed on this water right May 8, 2000, and was approved on August 4, 2000. The purpose of the change is to change the point of diversion from the well to the South Despain Ditch on Little Cottonwood Creek. It was also noted the approved change application stated the development proposed under the certificate for the well was never developed. It appears winter water was delivered under the winter water contract with SLC, but it is unclear how this portion of the decreed right was utilized during the summer.

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The State Engineer believes this water right derives from the Morse Decree. The State Engineer recognizes the concerns of the protestants in regard to the title of this application and in this regard has reviewed the recent Supreme Court decision in *Haik v. Sandy City*. The State Engineer has no authority to adjudicate the title of a water right¹. Therefore, the State Engineer is not in a position to refuse the processing of this application because of the protestant's assertion in regard to the title.

The State Engineer is of the opinion that an approved nonuse application only protects a water right from forfeiture for nonuse from the date the nonuse application is filed until the approved application's expiration date.

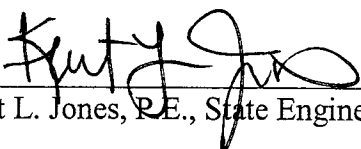
Your Application for Nonuse of Water has been APPROVED. Under Section 73-1-4, Utah Code Annotated, 1953, approval of your application grants a nonuse period for this water right from the date it was filed until the date it expires on September 30, 2018.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 16th day of September, 2011.


Kent L. Jones, P.E., State Engineer

¹ Daniels Irrigation Co. v. Daniel Summit Co., 571 P.2d 1323, 1324 (Utah 1977)

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Mailed a copy of the foregoing Order this 16th day of September, 2011 to:

Kevin Tolton
585 Lofty Lane
North Salt Lake, UT 84054

Salt Lake City Corporation
c/o Scott H. Martin
PO Box 45000
Salt Lake City, UT 84145-5000

Metropolitan Water District of Salt Lake & Sandy
c/o Scott H. Martin
PO Box 45000
Salt Lake City, UT 84145-5000

Sandy City
c/o David C. Wright
175 South Main, Suite 1330
Salt Lake City, UT 84111

BY: _____

Sonia R. Nava, Applications/Records Secretary